in this context its ordinary meaning, which is to impose upon a court an obligation to order forfeiture, once it is satisfied that the preconditions set out in the section have been met. It was argued that to impose upon a court such an obligation can operate with great unfairness and that there must be read into the section, a duty on the court to call upon the owner and anyone else, who may have a legitimate interest in the vehicle, an opportunity to show cause why it should not be forfeited.

I do not think that such provisions can be read into the Enactment. If the legislature had intended that there should be such a procedure, provision should have been included, as it has been, by section 118 of the Enactment before an order for forfeiture can be made of goods where there has been no prosecution in relation to them.

In any event, there are three decisions of the Supreme Court of Sarawak, North Borneo and Brunei, all by judges of co-ordinate jurisdiction to my own, which find that there is no such discretion in relation to an identical section 117 of the Sarawak Customs Ordinance as it was in force at the time of these decisions. They are *Chai Min Chow & Chia Chiat* v. *R.*[1], *R.* v. *Tan Long Cher*[2] and *Re Tan Han Leong*[3].

I need do no more than say that I follow and adopt the reasoning of the judges in those cases and particularly in the third one.

I understand that, in the past, there has been some inconsistency of practice since the prosecution has sometimes applied for forfeiture of a vehicle involved in a customs offence and sometimes has not done so; and that the courts have not made an order of forfeiture unless the prosecution has asked for it.

I am afraid that the wording of the section imposes an obligation on the court to order such forfeiture, once the conditions of section 117 are satisfied, whether or not there is an application for forfeiture by the prosecution.

This was made clear in all the cases quoted above and particularly by Bodley J. in *Chai Min Chow's* case.

The consequences of this section may be severe and unfair. It means, for instance, that the owner of a valuable motorcar, who smuggles a bottle of uncustomed alcohol into the State, and is detected and convicted for doing so, will lose his motorcar as well.

No doubt some of the worse effects of this very tough provision can be avoided if customs officers are prepared to use their discretion to compound offences under section 121 of the Enactment. And there is, of course, the residuary discretion, which is vested in His Majesty in Council under section 119 of the Enactment, to order the return on such terms or conditions as he may think fit of any goods which have been forfeited under the enactment.

The appeal must be dismissed.

Appeal dismissed.

Solicitors: *Sandhu & Co.*

NILI ANAK GUMBANG & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Power J.) April 2, 1985]

[Bandar Seri Begawan – Criminal Appeals Nos. 7, 8 & 9 of 1985]

Criminal Law & Procedure – Charge – Whether strict liability offence – Immigration Enactment, 1956, s.56(b) – Penal Code, s.107.

Immigration – Illegal immigrant – Abetment – Whether strict liability – Immigration Enactment, 1956, s.56(b).

Interpretation – Statute – More than one penalty prescribed for offence.

In this case all the appellants were appealing against conviction and sentence on a charge of abetting 2 illegal immigrants to enter the state of Brunei contrary to the provisions of section 56 of the Immigration Enactment 1956 as amended by the Emergency Immigration Amendment Order 1984. Section 56(b) under which the appellants were charged states that any person who "abets any person to enter or leave Brunei in contravention of the provisions of this Enactment or of the regulations" shall be guilty of an offence. The prosecution stated that they had proceeded upon the basis that section 56(b) created an offence of strict liability. The appellants contended as a ground of appeal that they did not understand the nature of the charge and did not have it properly explained to them.

Held: (1) what concerns is not whether the charge was explained to and understood by the appellants but *what* charge was explained to them. If the offence was put to them on the basis that it was an offence of strict liability and they pleaded to it upon the basis then, if it is not such an offence *i.e.* if knowledge forms an ingredient thereof then the pleas of the appellants were not valid pleas to the charge;

(2) the word "abet" is defined in section 107 Chapter V of the Penal Code. It states that a person abets the doing of a thing who intentionally aids the doing of that thing. Section 5A of the Code applies that section "to any written law now or hereunder in force to any instrument made thereunder". A person would therefore commit an offence under section 56(b) of the Immigration Enactment only if he intentionally aided any person to enter the state in contravention of the provisions of the Immigration Enactment. Proof of knowledge is therefore an ingredient of the offence and as such a charge was not put and explained to the appellants they must be allowed to reverse their pleas.

HIGH COURT.

Ivan Leong, (Deputy Public Prosecutor) for State.

Accused in person.

Power J: I am dealing here with 3 appeals in each of which the appellant is appealing against conviction and sentence on a charge of abetting 2 illegal immigrants to enter the State of Brunei contrary to the provisions of section 56 of the Immigration Enactment 1956 as amended by the Emergency Immigration Amendment Order 1984. Section 56(b), under which the appellants were charged, states that any person who "abets any person to enter or leave Brunei in contravention of the provisions of this Enactment or of the regulations" shall be guilty of an offence. This subsection of section 56 was not affected by the Amendment Order. The subsection of section 56 dealing with harbouring were, however, altered to delete the word "knowingly" therefrom.

It seems that the intention of the draftsman may have been to make offences under section 56 offences of strict liability. However that may be, section 56(b), which did not contain the word "knowingly," was left unaltered. The prosecution informs that they have proceeded upon the basis that section 56(b) does create an offence of strict liability and it was conceded that it was likely that the magistrate held the same view. This is important because one ground of appeal is that the appellants did not understand the nature of the charge and did not have it properly explained to them.

The Appellants, in their affidavits, go further and say that, because of their dialects, they had difficulty in understanding what was said to them. It seems to me, given the affidavits from the interpreter and the magistrate, saying that the appellants said that they understood Malay, that the charges were read and explained to them in Malay, and that they stated that they understood them, that I should not give any weight to this suggestion.

What concerns, however, is not *whether* the charge was explained to and understood by the appellants but *what* charge was explained to them. If the offence was put to them on the basis that it was an offence of strict liability and I am satisfied that I must, in fairness to the accused, proceed upon the basis that it was, and they pleaded to it upon that basis then, if it is not such an offence *i.e.* if knowledge forms an ingredient thereof, then I must hold that the plea of the appellants was not a valid plea to the charge.

The word "abet" is defined in section 107, Chapter V, of the Penal Code. It states that a person abets the doing of a thing who intentionally aids the doing of that thing. Section 5A of the Code applies that section "to any written law now or hereunder in force and to any instrument made thereunder." A person would therefore commit an offence under section 56(b) of the Immigration Enactment only if he intentionally aided any person to enter the state in contravention of the provisions of the Immigration Enactment. Proof of knowledge is, therefore, an ingredient of the offence and, as I am satisfied that I must proceed upon the basis that such a charge was not put and explained to the appellants, they must be allowed to reverse their pleas. The matters are remitted to the Magistrate's Court for an early trial.

I feel it proper to comment, before leaving the matter, on the new penalty section inserted by the Amendment Order 1984. This provides that offenders against section 56 are liable "to imprisonment for a term of not less than one year and not more than seven years and a fine not exceeding twenty thousand dollars and whipping." It seems to me clear, by virtue of section 38 of the Interpretation and General Clauses Enactment 1959, which states that "whenever, in or by virtue of any written law, more than one penalty is prescribed for an offence, the use of the word 'and' shall signify that the penalties may be inflicted alternatively or cumulatively ..." that it is open to the Court under the penalty section to impose either a prison sentence or a fine or whipping but that, if the Court does decide to impose a prison sentence, it must be for not less than 1 year.

Order accordingly.